

UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MASSACHUSETTS

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2005 MAY 11 P 12: 06

U.S. DISTRICT COURT  
DISTRICT OF MASS.  
Civ. Action No. 05-30016-KPN

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MARCOS Y. KLEINERMAN,

Plaintiff,

- against -

MICHAEL M. SALOUR, JAMES H. BECHTEL,  
and IPICOM, INC. (d/b/a/ IPITEK)

Defendant.  
:  
:  
:  
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**JOINT STATEMENT OF PROPOSED PRETRIAL SCHEDULE**

Pursuant to Local Rule 16.1(D) of this Court, the parties propose the following pretrial schedule:

**1. Discovery plan.**

The parties have agreed to a phasing of discovery.

**a. Phase I.**

**Subject matter of Phase I discovery.** Discovery in the first phase will be limited to initial disclosures, requests for production of documents and things, and interrogatories concerning:

(i) the plaintiff's licensing of the claims asserted and

*DEFENDANT'S PROPOSED (ii):*

(ii) the defendant's sales of the accused product,

*PLAINTIFF'S PROPOSED (ii) AND (iii):*

(ii) the defendant's sales of all optical thermometers using luminescent probes, and

(iii) The defendants' data relating to

(A) the composition and physical properties of all the luminescent probes used in Ipitek's Lumitherm devices and any other temperature

measuring devices sold by Ipitek, with sufficient detail to allow a determination of whether said probes are covered by the plaintiff's patent claims subject of the Complaint; and

- (B) detailed description of all the Ipitek temperature measuring devices using said probes, including circuit diagrams and modes of operation, with sufficient detail to allow a determination of whether said probes are covered by the plaintiff's patent claims subject of the Complaint;

**Protective Order.**

*DEFENDANTS:* subject to a suitable confidentiality order providing for "attorney's eyes only" and "confidential" designations, which shall be discussed and presented to the Court as soon as possible.

*PLAINTIFF:* subject to a suitable confidentiality order the extent and limitation of which shall be discussed and presented to the Court as soon as possible.

**Initial Disclosures.** In Phase I, initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) are to be filed no later than June 15, 2005.

**Interrogatories and Requests for Production of Documents and Things.** Interrogatories on the phased topics and requests for production of documents and things are to be served by July 8, 2005, and responses are to be served within the time provided by the Fed. R. Civ. P.

PLAINTIFF PROPOSES THAT "THINGS" INCLUDE:  
"the temperature probes used in Ipitek's Lumitherm devices."

DEFENDANT PROPOSES THAT PHASE I DISCOVERY  
BE LIMITED AS AFORESAID.

**Purpose of Phase I; notification of status.** It is hoped that the developed information will allow the parties to assess the case to an extent necessary to encourage a settlement. The parties shall notify the Court of settlement status by letter on or before August 31, 2005.

**b. Phase II.**

*DEFENDANTS' PROPOSED DEADLINES:*

Discovery in the second phase shall consist of any remaining discovery necessary for trial.

- i. Written discovery shall be served by September 30, 2005.
- ii. Depositions of fact witnesses shall be noticed by January 6, 2006, and completed by March 6, 2006.
- iii. Fact discovery will close on March 6, 2006.
- iv. The plaintiff shall provide initial expert witness interrogatory answers and reports by February 6, 2006. Defendant shall provide initial expert witness interrogatory answers and reports by April 7, 2006. Plaintiff shall provide rebuttal reports, if any, by May 5, 2006.
- v. The parties shall notice expert witness depositions by May 19, 2006, and complete any expert depositions by July 21, 2006.
- vi. All discovery will close by July 21, 2006.

*PLAINTIFF'S PROPOSED DEADLINES:*

Discovery in the second phase shall consist of any remaining discovery necessary for trial.

- i. Written discovery requests shall be served by September 30, 2005.
- ii. Depositions of fact witnesses shall be noticed by September 30, 2005, and completed by December 9, 2005.
- iii. Fact discovery will close on December 9, 2005.
- iv. The parties shall notice expert witness depositions by October 31, 2005 and complete any expert depositions by January 6, 2006.
- v. All discovery will close by January 6, 2006.

2. **Schedule for filing of motions:**

*DEFENDANTS' PROPOSED DEADLINES:*

- a. Motions to amend pleadings shall be served by May 31, 2005.
- b. Motions for *Markman* claim construction, if any, shall be served and filed by August 31, 2006, and responses shall be served 45 days thereafter.
- c. All dispositive motions, including motions for summary judgment, are to be filed not later than 45 days after the entry of the Court's claim construction determination, if any, or by September 29, 2006 if no claim construction motions are filed, and responses are to be filed 45 days thereafter, with reply briefing 21 days thereafter.

*PLAINTIFF'S PROPOSED DEADLINES:*

- a. Motions to amend pleadings shall be served no later than 30 days after discovery is completed.
- b. Motions for order compelling discovery may be served within thirty (30) days after alleged failure by the opposing party to fully comply with a discovery request.
- c. Motions for *Markman* claim construction, if any, shall be served and filed by February 10, 2006, and responses shall be served 45 days thereafter.
- d. All dispositive motions, including motions for summary judgment, are to be filed not later than 45 days after the entry of the Court's claim construction determination, if any, or by March 10, 2006 if no claim construction motions are filed, and responses are to be filed 45 days thereafter, with reply briefing 21 days thereafter.

3. **Certifications.** The undersigned certify that they will have discussed the topics set forth in L.R. 16.1(D)(3) with their respective clients by May 18, 2005, and will file with the Court signed certifications by that date.

Dated: May 11, 2005

MARCOS Y. KLEINERMAN

Pro se,

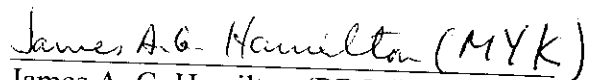
  
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